

which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the com-

plete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

PART 955—LOAN GUARANTEES FOR INDIAN HOUSING

Sec.

- 955.101 Applicability and scope.
- 955.103 Definitions.
- 955.105 Eligible loans.
- 955.107 Eligible collateral.
- 955.109 Guarantee fee.
- 955.111 Safety and quality standards.

AUTHORITY: 42 U.S.C. 1715z-13a and 3535(d).

SOURCE: 61 FR 9054, Mar. 6, 1996, unless otherwise noted.

§ 955.101 Applicability and scope.

Under the provisions of section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a), the Department of Housing and Urban Development (the Department) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes to be

owned by Native Americans on restricted Indian lands. This part provides requirements that are in addition to those in section 184.

(Approved by the Office of Management and Budget under control number 2577-0200)

§ 955.103 Definitions.

In addition to the definitions that appear in Section 184 of the Housing and Community Development Act of 1992, the following definitions are applicable to loan guarantees under Section 184—

Default means the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, and such failure continues for a period of more than 30 days.

Indian means any person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term “Native American”.

Mortgage as used in this part, means a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

Principal residence means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

Section 184 means section 184 (entitled, “Loan Guarantees for Indian Housing”) of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a).

§ 955.105 Eligible loans.

(a) *In general.* Only fixed rate, fixed term loans with even monthly payments are eligible under the Section 184 program.

(b) *Eligible borrowers.* A loan guaranteed under Section 184 may be made to a borrower that is:

(1) An Indian who will occupy it as a principal residence and who is otherwise qualified under Section 184; or

(2) An Indian Housing Authority.

(c) *Appraisal of labor value.* The value of any improvements to the property made through the skilled or unskilled labor of the borrower, which may be used to make a payment on account of the balance of the purchase price, must be appraised in accordance with generally acceptable practices and procedures.

(d) *Construction advances.* The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the commitment;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Environmental compliance.* Prior to the guarantee of any loan, there must be compliance with the environmental rules as stated in 24 CFR part 50.

§ 955.107 Eligible collateral.

(a) *In general.* A loan guaranteed under Section 184 may be secured by any collateral authorized under Federal, State, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject